

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 8/24/2006. It is noted, however, that applicant has not filed a certified copy of the 202004003067.5 application as required by 35 U.S.C. 119(b).

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first shaft, second shaft, two first arms and two second arms must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The amendment filed 8/24/2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the original disclosure does not provide support for the amended paragraph to page 2 line 21. Specifically, the original disclosure provides no support for the reference to WO-A-03/028615 which Applicant is relying upon to disclose known massage carriages of the type disclosed. The amendments with respect to the specifics of the first shaft, lower shaft, connecting rods are not supported by originally cited WO 97/37627. MPEP 1893.01(a)(3) states "The fact that an amendment made to the international application during the international phase was entered in the national stage application does not necessarily mean that the amendment is proper. Specifically, amendments are not permitted to introduce "new matter" into the application. See PCT Article **34**(2)(b). Where it is determined that such amendments introduce new matter into the application, then the examiner should proceed as in the case of regular U.S. national applications filed under

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35 U.S.C. **111**(a) by requiring removal of the new matter and making any necessary rejections to the claims. See MPEP § **608.04** and § **2163.06**.”

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 and 4-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Regarding claim 1, the phrase "or the like" and "or similar" render the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). Furthermore, "i.e." and "and/or" are indefinite because it is unclear what limitation such language places on the claimed subject matter.

7. Claim 1 recites the limitation "the point of connection" and "the side" in lines 9 and 15. There is insufficient antecedent basis for this limitation in the claim.

8. Claim 11 recites the limitation "the region" and "the travel path" in line 2. There is insufficient antecedent basis for this limitation in the claim.

9. Claims 4-10 and 12-14 are rejected insofar as they contain the same defects as the claims from which they depend.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miki et al (US 2003/0216674) in view of Miki (US 2005/0096571).

12. Regarding claim 1, Miki '674 discloses a massage carriage (40) for use in a massage chair that can be moved back and forth along a frame in the massage chair, comprising a drive (430, 530), a first shaft (410) that can be moved by the drive ([0056]) and a second shaft (510) that can be moved by the drive ([0060]), two first arms (404L and 404R), which are connected to the first shaft (Fig. 13), can be moved by the first shaft ([0045]) and on each of which a massage element (402, 403) is mounted, and two second arms (550R and 550L), which are connected to the second shaft and can be moved by the second shaft ([0053], [0076]), one of which each acts on one of the first arms (Fig. 11), such that the massage elements can be moved by the drive with one movement component oriented parallel to the frame and one oriented perpendicular to the frame where the effective length of the second arms ([0006], [0073]-[0075]), i.e., the distance between the point of connection to the second shaft and the point of action on the respective first arm, is adjustable ([0076]), characterized in that the first arms are designed, and the first and second arms arranged, in such a way that the effective

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length of the second arms can be reduced ([0076]). Miki '674 does not disclose the effective length of the second arms can be reduced by applying a predetermined pressure on the side of the first arms facing away from the second arms and/or on the side of the massage elements facing away from the first arms, against an initial tension. Miki '571 teaches a similar massage machine wherein the massage element (27, 29) and arm are moved to a retracted position (12A) by applying a predetermined pressure on the side of the massage elements facing away from the first arms (29), against an initial tension ([0052]). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the device of Miki '674 wherein the length of the second arms are reduced in response to pressure applied to the massage elements on the side facing away from the first arms, as taught by Miki '571, to provide the desired amount of massaging force against particular areas of the user's body.

13. Regarding claim 8, Miki '674 appears to show a spring element (fig. 11) although not explicitly stated. Miki '571 teaches a spring element (642) acting against the reduction of the length of the second arm (32; [0059]). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the provide the device of Miki '674 including a spring, as taught by Miki '571, to provide the desired amount of massaging force and bias the massaging elements against particular areas of the user's body.

14. Regarding claim 9, Miki '674 further discloses a mechanical or electric trigger element is provided, whose actuation allows the length of the second arms to be reduced ([0072]).

15. Regarding claim 10, Miki '674 further discloses a frame (20) along which the massage carriage can be moved, characterized by an operating element located on the frame, by means of which the trigger element can be actuated when a predetermined position of the massage carriage on the frame is reached ([0072]).

Allowable Subject Matter

16. Claims 4-7 and 11-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KARI PETRIK whose telephone number is (571)270-1909. The examiner can normally be reached on Monday-Thursday, 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PATRICIA BIANCO can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KARI PETRIK/
Examiner, Art Unit 3772

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